

Exhibit 1

**Email Chain re: “EDNY DACA Rescission
Litigation - Meet-and-Confer Obligations and
Administrative Record”**

From: [Susanna Evarts](#)
To: [Pezzi, Stephen \(CIV\)](#); [Victoria Roeck](#); [Diane Lucas](#)
Cc: [Colleen Melody \(ColleenM1@ATG.WA.GOV\)](#); [Bailey, Kate \(CIV\)](#); [Lourdes Rosado](#); [Abigail Taylor](#); [Nadeau, Genevieve \(AGO\)](#); [Rosenberg, Brad \(CIV\)](#); [Batalla@maketheroadny.org](#); [BatallaVidal_LSO@mailman.yale.edu](#); [Marsha Chien](#); [Marutollo, Joseph \(USANYE\)](#); [Batalla](#)
Subject: Re: [Batallavidal_Iso] EDNY DACA Rescission Litigation - Meet-and-Confer Obligations and Administrative Record
Date: Sunday, October 15, 2017 8:32:48 PM

Mr. Pezzi,

Thank you for your email, and for reaching out about your concerns. As a preliminary matter, the *Batalla Vidal* and State Plaintiffs' summary of our meet and confer reflects Plaintiffs' understanding of that conversation, and Defendants are free to clarify their position in their response.

Regarding the two complaints you raised, Plaintiffs do not believe they require us to file a corrected motion. First, in the context of our letter motion, there is no meaningful distinction between "actually considered" and "directly considered," especially since Defendants represented that materials considered by subordinates but not by Acting Secretary Duke herself were not produced in the administrative record. Second, Plaintiffs believe our statement that "no documents considered or relied on by subordinates or other decision makers were included," does not imply the record was limited to documents that *only* Acting Secretary Duke considered. Indeed, such a reading would be nonsensical, especially since the administrative record only included documents that were publicly available.

Please let us know if you have any additional questions or concerns.

Best,

Susanna

—

Susanna D. Evarts
Law Student Intern
Jerome N. Frank Legal Services Organization
susanna.evarts@ylsclinics.org

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From: <batallavidal_Iso-bounces@mailman.yale.edu> on behalf of "Pezzi, Stephen (CIV)" <Stephen.Pezzi@usdoj.gov>

Date: Saturday, October 14, 2017 at 10:41 AM

To: Victoria Roeck <victoria.roeck@ylsclinics.org>, Diane Lucas <diane.lucas@ag.ny.gov>

Cc: "Colleen Melody (ColleenM1@ATG.WA.GOV)" <ColleenM1@ATG.WA.GOV>, "Bailey, Kate (CIV)" <Kate.Bailey@usdoj.gov>, Lourdes Rosado <lourdes.rosado@ag.ny.gov>, Abigail Taylor <Abigail.Taylor@MassMail.State.MA.US>, "Nadeau, Genevieve (AGO)" <genevieve.nadeau@state.ma.us>, "Rosenberg, Brad (CIV)" <Brad.Rosenberg@usdoj.gov>, "Batalla@maketheroadny.org" <Batalla@maketheroadny.org>, "BatallaVidal_LSO@mailman.yale.edu" <BatallaVidal_LSO@mailman.yale.edu>, Marsha Chien <MarshaC@ATG.WA.GOV>, "Marutollo, Joseph (USANYE)" <Joseph.Marutollo@usdoj.gov>, Batalla <Batalla@nilc.org>

Subject: Re: [Batallavidal_Iso] EDNY DACA Rescission Litigation - Meet-and-Confer Obligations and Administrative Record

Dear Counsel,

Sorry to bother you on a Saturday morning. There are two issues I would like to raise regarding your filing of yesterday evening about the administrative record:

First, I want to thank you for submitting your filing as one joint letter. My colleagues and I appreciate that, and I suspect that Magistrate Judge Orenstein does too.

Second, and more importantly, I am concerned that your filing contains some misrepresentations about things that I said on our meet-and-confer call of yesterday afternoon. I assume this was inadvertent, but I am respectfully requesting that you promptly submit a revised version of the filing that corrects the errors, or that you otherwise notify the Court of the inaccuracies.

Specifically, your filing says that, on our meet-and-confer call, "Defendants confirmed that the October 6 administrative record was limited to what Acting Secretary Duke had directly considered when deciding to terminate the DACA policy, and that no documents considered or relied on by subordinates or other decision makers were included."

As for the first half of this sentence, I used the words "actually considered," rather than "directly considered." I might normally let an error like that go, but given that the entire premise of your filing is that the government has adopted an incorrect legal standard on this very issue, and your repeated invocation of the language "directly or indirectly considered," had I actually conceded that we only included documents that were "directly considered," that could, potentially, have significance to the Court's analysis of these issues. And, in fact, I did not make any such statement.

As for the second half of this sentence, I also never said that "no documents considered or relied on by subordinates or other decision makers were included." To be sure, we have maintained (and I did say again yesterday) that the proper focus of the administrative record in this case is the Acting Secretary of Homeland Security herself, and the documents that she considered. But I never said that our definition excluded all "documents considered or relied on by subordinates or other decision makers." Nor would that make sense, as a legal matter – of course, if a non-privileged document was considered by the Acting Secretary as part of this decision, but also by her subordinates or others outside of DHS, that document would be included in the administrative

record. In fact, those sorts of documents do actually appear in the administrative record that we filed with the Court.

My assumption, of course, is that these inaccuracies were inadvertent. Nevertheless, I do respectfully request that you promptly submit a corrected version of the filing, or otherwise clarify your submission to the Court. I would be willing to submit a declaration swearing to my recollection of this call under penalty of perjury, although of course I hope that that proves to be unnecessary.

Thank you very much for your prompt consideration of this request. As always, please let me know if you would like to discuss this (or any other issue) further.

Sincerely,

Stephen M. Pezzi

Trial Attorney

United States Department of Justice

Civil Division - Federal Programs Branch

20 Massachusetts Avenue NW

Washington, DC 20530

(202) 305-8576 | stephen.pezzi@usdoj.gov

From: Pezzi, Stephen (CIV)

Sent: Friday, October 13, 2017 11:51 AM

To: 'Victoria Roeck' <victoria.roeck@ylsclinics.org>; Diane Lucas <Diane.Lucas@ag.ny.gov>

Cc: batallavidal_iso@mailman.yale.edu; Batalla <Batalla@nilc.org>; Batalla@maketheroadny.org;

Lourdes Rosado <Lourdes.Rosado@ag.ny.gov>; Abigail Taylor

<Abigail.Taylor@MassMail.State.MA.US>; Nadeau, Genevieve (AGO)

<genevieve.nadeau@state.ma.us>; Colleen Melody (ColleenM1@ATG.WA.GOV)

<ColleenM1@ATG.WA.GOV>; Marsha Chien <MarshaC@ATG.WA.GOV>; Rosenberg, Brad (CIV)

<BRosenbe@civ.usdoj.gov>; Bailey, Kate (CIV) <katbaile@CIV.USDOJ.GOV>; Marutollo, Joseph

(USANYE) <Joseph.Marutollo@usdoj.gov>

Subject: RE: EDNY DACA Rescission Litigation - Meet-and-Confer Obligations and Administrative Record

Thanks very much. I look forward to speaking with everyone at 2.

Stephen M. Pezzi

Trial Attorney

United States Department of Justice

Civil Division - Federal Programs Branch

20 Massachusetts Avenue NW

Washington, DC 20530

(202) 305-8576 | stephen.pezzi@usdoj.gov

From: Victoria Roeck [<mailto:victoria.roeck@ylsclinics.org>]

Sent: Friday, October 13, 2017 11:20 AM

To: Diane Lucas <Diane.Lucas@ag.ny.gov>

Cc: Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>; batallavidal_iso@mailman.yale.edu; Batalla <Batalla@nilc.org>; Batalla@maketheroadny.org; Lourdes Rosado <Lourdes.Rosado@ag.ny.gov>; Abigail Taylor <Abigail.Taylor@MassMail.State.MA.US>; Nadeau, Genevieve (AGO) <genevieve.nadeau@state.ma.us>; Colleen Melody (ColleenM1@ATG.WA.GOV) <ColleenM1@ATG.WA.GOV>; Marsha Chien <MarshaC@ATG.WA.GOV>; Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>; Bailey, Kate (CIV) <katbaile@CIV.USDOJ.GOV>; Marutollo, Joseph (USANYE) <Joseph.Marutollo@usdoj.gov>

Subject: Re: EDNY DACA Rescission Litigation - Meet-and-Confer Obligations and Administrative Record

Dear Mr. Pezzi,

The Batalla Vidal Plaintiffs are available at 2 p.m. Here is a dial-in number for the call:

Conference Number:

[REDACTED]

Participants Code:

[REDACTED]

Best,

Victoria Roeck

--

Victoria Roeck
Law Student Intern
Jerome N. Frank Legal Services Organization
Yale Law School

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On Oct 13, 2017, at 10:31 AM, Diane Lucas <Diane.Lucas@ag.ny.gov> wrote:

Mr. Pezzi,

The Plaintiff States will also join the meet and confer today at 2pm EST.

Best,

Diane Lucas
Assistant Attorney General
Civil Rights Bureau
Office of the NYS Attorney General

120 Broadway, 23rd Floor
New York, New York 10271
Tel: (212) 416-8149
Fax: (212) 416-8074

From: Pezzi, Stephen (CIV) [<mailto:Stephen.Pezzi@usdoj.gov>]
Sent: Friday, October 13, 2017 8:00 AM
To: Victoria Roeck <victoria.roeck@ylsclinics.org>; Diane Lucas <Diane.Lucas@ag.ny.gov>
Cc: batallavidal_iso@mailman.yale.edu; Batalla <Batalla@nilc.org>; Batalla@maketheroadny.org; Lourdes Rosado <Lourdes.Rosado@ag.ny.gov>; Abigail Taylor <Abigail.Taylor@MassMail.State.MA.US>; Nadeau, Genevieve (AGO) <genevieve.nadeau@state.ma.us>; Colleen Melody (ColleenM1@ATG.WA.GOV) <ColleenM1@ATG.WA.GOV>; Marsha Chien <MarshaC@ATG.WA.GOV>; Rosenberg, Brad (CIV) <Brad.Rosenberg@usdoj.gov>; Bailey, Kate (CIV) <Kate.Bailey@usdoj.gov>; Marutollo, Joseph (USANYE) <Joseph.Marutollo@usdoj.gov>
Subject: RE: EDNY DACA Rescission Litigation - Meet-and-Confer Obligations and Administrative Record

Ms. Roeck – thanks very much. How about 2 PM? Could you please circulate a dial-in?

Ms. Lucas – the position of the United States with respect to the proper scope of an administrative record has not changed since Wednesday, so, based on your email of yesterday evening, I assume that you therefore do not wish to participate in this meet-and-confer call. But, if you wish to reconsider that decision, please let us know (or just dial in for the 2 PM call).

Best,

Stephen M. Pezzi

Trial Attorney
United States Department of Justice
Civil Division - Federal Programs Branch
20 Massachusetts Avenue NW
Washington, DC 20530
(202) 305-8576 | stephen.pezzi@usdoj.gov

From: Victoria Roeck [<mailto:victoria.roeck@ylsclinics.org>]
Sent: Thursday, October 12, 2017 9:44 PM
To: Diane Lucas <Diane.Lucas@ag.ny.gov>
Cc: Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>; batallavidal_iso@mailman.yale.edu; Batalla <Batalla@nilc.org>; Batalla@maketheroadny.org; Lourdes Rosado <Lourdes.Rosado@ag.ny.gov>; Abigail Taylor <Abigail.Taylor@MassMail.State.MA.US>; Nadeau, Genevieve (AGO) <genevieve.nadeau@state.ma.us>; Colleen Melody

(ColleenM1@ATG.WA.GOV) <ColleenM1@ATG.WA.GOV>; Marsha Chien
<MarshaC@ATG.WA.GOV>; Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>; Bailey,
Kate (CIV) <katbaile@CIV.USDOJ.GOV>; Marutollo, Joseph (USANYE)
<Joseph.Marutollo@usdoj.gov>

Subject: Re: EDNY DACA Rescission Litigation - Meet-and-Confer Obligations and
Administrative Record

Mr. Pezzi,

We are also willing to meet and confer tomorrow, together with Plaintiff
States, regarding the scope of the administrative record. We are available before
10 a.m. or from 12:30 to 2:30 p.m. We would welcome any narrowing of the
issues that is possible, consistent with the litigation schedule set by the court.

Best,

Victoria Roeck

--

Victoria Roeck
Law Student Intern
Jerome N. Frank Legal Services Organization
Yale Law School

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mail or otherwise. Instead, please notify me immediately by return e-mail (including the original
message in your reply) and by telephone and then delete and discard all copies of the e-mail.

On Oct 12, 2017, at 5:49 PM, Diane Lucas
<Diane.Lucas@ag.ny.gov> wrote:

Mr. Pezzi,

Thank you for your email. With respect to your request in the last
paragraph, the Plaintiff States are willing to meet and confer
regarding the scope of the administrative record if the Defendants'
position has changed since our conference yesterday.

Please let us know.

Best regards,

Diane Lucas
Assistant Attorney General
Civil Rights Bureau
Office of the NYS Attorney General
120 Broadway, 23rd Floor
New York, New York 10271
Tel: (212) 416-8149
Fax: (212) 416-8074

From: Pezzi, Stephen (CIV) [<mailto:Stephen.Pezzi@usdoj.gov>]
Sent: Thursday, October 12, 2017 3:44 PM
To: batallavidal_iso@mailman.yale.edu; Batalla
<Batalla@nilc.org>; Batalla@maketheroadny.org; Victoria Roeck
<victoria.roeck@ylsclinics.org>; Lourdes Rosado
<Lourdes.Rosado@ag.ny.gov>; Diane Lucas <Diane.Lucas@ag.ny.gov>;
Abigail Taylor <Abigail.Taylor@MassMail.State.MA.US>; Nadeau,
Genevieve (AGO) <genevieve.nadeau@state.ma.us>; Colleen Melody
(ColleenM1@ATG.WA.GOV) <ColleenM1@ATG.WA.GOV>; Marsha Chien
<MarshaC@ATG.WA.GOV>
Cc: Rosenberg, Brad (CIV) <Brad.Rosenberg@usdoj.gov>; Bailey, Kate
(CIV) <Kate.Bailey@usdoj.gov>; Marutollo, Joseph (USANYE)
<Joseph.Marutollo@usdoj.gov>
Subject: EDNY DACA Rescission Litigation - Meet-and-Confer Obligations
and Administrative Record

Dear Counsel,

It was nice to see some of you in Brooklyn yesterday. I hope all is well.

I write with a request that I am hopeful you are able to accommodate going forward. Yesterday, I learned, for the first time in front of our Magistrate Judge, of several concerns you had about a handful of our discovery objections. I can appreciate the expedited nature of our schedule and that it may take time to formulate your position on some of these issues, but it is difficult to respond meaningfully to those sorts of concerns when they are raised in open court for the first time. I am also confident that the Magistrate Judge, who wants to handle these cases efficiently, would appreciate the parties attempting to discuss and negotiate to resolve such disputes in good faith before raising them in court (which is presumably why he generally rejected those arguments as being not ripe for resolution in his minute order of yesterday). That is all separate and apart from Section II(f) of Magistrate Judge Orenstein's case-management order and Local Civil Rule 37.3(a), both of which explicitly require such efforts. I also feel obligated to point out that you have, more than once, and in filings with the Court, accused my colleagues and me of violating our obligations in this respect, even when (unlike here) we have attempted to confer about an issue before presenting it to the Court. I am fully aware that the expedited timing of these cases makes this more challenging than usual, but please at least try to meet and confer with us before raising such disputes with the Court in the future.

For much of the same reasons, I would also ask that you wait to receive

our written discovery responses before you raise issues with our objections, in this somewhat unusual context in which we are obligated to serve our objections separate and apart from our responses. It is difficult to evaluate one without the other.

To that end, I do appreciate Ms. Roeck's attempt to meet-and-confer regarding the scope of the administrative record, even though it came at 11 PM the night before the status conference and we were ultimately unable to have a meaningful discussion before yesterday's court appearance. I remain willing to discuss that issue, notwithstanding Magistrate Judge Orenstein's directive that we provide letter briefs on Friday and Monday. I am confident that we are unlikely to reach complete agreement, but I am happy to at least attempt to narrow our areas of disagreement before Friday. If you would be interested in that sort of conversation, please let me know.

Best regards,

Stephen M. Pezzi

Trial Attorney
United States Department of Justice
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